

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying the result of section 10(b)(1) by the price election;

(3) Multiplying the total production to be counted, (see section 10(c)) by the price election;

(4) Subtracting the total in section 10(b)(3) from the total in section 10(b)(2); and

(5) Multiplying the result in section 10(b)(4) by your share.

(c) The total production to count (in barrels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Damaged solely by uninsured causes;

(C) For which you fail to provide acceptable production records; or

(D) Destroyed or put to another use without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we will use the appraised amount of production or defer the claim if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general to the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(3) Harvested production which, due to insurable causes, is determined not to meet the United States Standards for Fresh Cranberries if available, or would not meet those standards if properly handled, or does not meet the quality requirements of the receiving handler if the United States Standards for Fresh Cranberries, if not available, and

such harvested production has a value less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 5905, Feb. 10, 1997, as amended at 62 FR 65172, Dec. 10, 1997]

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 2013 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Prune Crop Provisions

1. Definitions

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include: selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Harvest. Picking of mature prunes from the trees or ground either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Natural condition prunes. The condition of prunes in which they are normally delivered from a dehydrator or dry yard.

Prunes. Any type or variety of plums that is grown in the area for the production of prunes and that meets the requirements defined in the applicable Federal Marketing Agreement Dried Prune Order.

Standard prunes. Any natural condition prunes:

(a) That grade "C" or better in accordance with the United States Standards for Grades of Fresh Plums and Prunes; or

(b) That meet or exceed the grade standards in effect for the crop year if a Federal

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Marketing Agreement Dried Prune Order has been established for the area in which the insured crop is grown.

Ton. Two thousand (2,000) pounds avoirdupois.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable. Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the prunes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yields below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any such situation listed in section 3(b) that may occur. If you fail to notify us of any situation in section 3(b), we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance. If the situation in section 3(b) occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes when determining any indemnity. We may reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the prunes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for the production of natural condition prunes;

(c) That are grown on trees that:

(1) Are listed as insurable types in the Special Provisions;

(2) Are grown on rootstock that is adapted to the area;

(3) Are irrigated (except where otherwise provided in the Special Provisions);

(4) Are grown in an orchard that, if inspected, is considered acceptable by us; and

(5) Have reached at least the seventh growing season after being set out.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, prunes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on March 1. For each subsequent crop year the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(2) The calendar date for the end of the insurance period for each crop year is:

- (i) October 1 for California; or
- (ii) October 15 for Oregon.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of prunes on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

- (i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;
- (ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and
- (iii) The transferee is eligible for crop insurance.

(c) If your prune policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates, whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance

is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and undergrowth have not been controlled or pruning debris has not been removed from the orchard;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) Failure of the irrigation water supply, if due to a cause specified in section 9(a)(1) through (5) that occurs during the insurance period;
- (7) Insects, but not damage due to insufficient or improper application of pest control measures; or
- (8) Plant disease, but not damage due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to inability to market the prunes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

(b) In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(1) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(2) You must notify us at least 15 days before any production from any unit will be sold by direct marketing or sold as fresh fruit. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing or is sold as fresh fruit production. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing or sold as fresh fruit will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(3) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or immediately if damage is discovered during harvest, so that we may inspect the damaged production.

(4) You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to count (see section 11(c)), of each type, if applicable, by its respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

Example 1: You select 75 percent coverage level, 100 percent of the price election, and have a 100 percent share in 50.0 acres of type A prunes in the unit. The production guarantee is 2.5 tons per acre and your price election is \$630.00 per ton. You harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres \times 2.5 tons = 125.0-ton production guarantee;

(2) 125.0-ton guarantee \times \$630.00 price election = \$78,750 value of production guarantee;

(4) 10.0 tons \times \$630.00 price election = \$6,300 value of production to count;

(6) \$78,750 $-$ \$6,300 = \$72,450 loss; and

(7) \$72,450 \times 1.000 share = \$72,450 indemnity payment.

Example 2: In addition to the information in the first example, you have an additional 50.0 acres of type B prunes with 100 percent share in the same unit. The production guarantee is 2.0 tons per acre and the price election is \$550.00 per ton. You harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres \times 2.5 tons = 125.0-ton production guarantee for type A and 50.0 acres \times 2.0 tons = 100.0-ton production guarantee for type B;

(2) 125.0-ton guarantee \times \$630.00 price election = \$78,750 value of production guarantee for type A and 100.0-ton guarantee \times \$550.00 price election = \$55,000 value production guarantee for type B;

(3) \$78,750 + \$55,000 = \$133,750 total value of production guarantee;

(4) 10.0 tons \times \$630.00 price election = \$6,300 value of production to count for type A and 5.0 tons \times \$550.00 price election = \$2,750 value of production to count for type B;

(5) \$6,300 + \$2,750 = \$9,050 total value of production to count;

(6) \$133,750 $-$ \$9,050 = \$124,700 loss; and

(7) \$124,700 loss \times 1.000 share = \$124,700 indemnity payment.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing or sold as fresh fruit if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that meets the definition of standard prunes; and

(iv) Potential production on insured acreage you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage that:

(i) Meets the definition of standard prunes;

(ii) Is intended for use as fresh fruit;

(iii) Is sold as standard prunes; or

(iv) Is damaged due to uninsured causes.

(d) Any prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.0.

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12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 58630, Oct. 30, 1997, as amended at 62 FR 65172, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000; 77 FR 59048, Sept. 26, 2012]

§457.134 Peanut crop insurance provisions.

The Peanut Crop Insurance Provisions for the 2007 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies.

Peanut Crop Insurance Provisions.

1. Definitions

Base contract price. The price for farmers' stock peanuts stipulated in the sheller contract, without regard to discounts or incentives that may apply, not to exceed the price election times the price factor specified in the Special Provisions.

Farmers' stock peanuts. Picked or threshed peanuts produced in the United States, which are not shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which peanuts are customarily marketed by producers.

Green peanuts. Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means.

Handler. A person who is a sheller, a buying point, a marketing association, or has a contract with a sheller or a marketing association to accept all of the peanuts marketed through the marketing association for the crop year. The handler acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

Harvest. The completion of digging and threshing and removal of peanuts from the field.

Marketing association. A cooperative approved by the Secretary of the United States Department of Agriculture to administer payment programs for peanuts.

Planted acreage. In addition to the requirement in the definition in the Basic Provisions, peanuts must initially be planted in a row pattern which permits mechanical cultivation, or that allows the peanuts to be cared for in a manner recognized by agricul-

tural experts as a good farming practice. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Price election. In addition to the definition in the Basic Provisions, the price election for peanuts insured in accordance with a sheller contract will be the base contract price specified in the sheller contract.

Price factor. The factor specified in the Special Provisions that places limits on the base contract price.

Sheller. Any business enterprise regularly engaged in processing peanuts for human consumption; that possesses all licenses and permits for processing peanuts required by the state in which it operates; and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted peanuts within a reasonable amount of time after harvest.

Sheller contract. A written agreement between the producer and a sheller, or the producer and a handler, containing at a minimum:

(a) The producer's commitment to plant and grow peanuts, and to deliver the peanut production to the sheller or handler;

(b) The sheller's or handler's commitment to purchase all the production stated in the sheller contract (an option to purchase is not a commitment); and

(c) A base contract price.

If the agreement fails to contain any of these terms, it will not be considered a sheller contract.

2. Unit Division

In accordance with the Basic Provisions, basic and optional units are applicable, unless limited by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) The price election percentage you choose for peanuts which are not insured in accordance with a sheller contract (may also include peanuts in excess of the amount required to fulfill your sheller contract) and for peanuts insured in accordance with a sheller contract must have the same percentage relationship to the maximum price election offered by us for peanuts not insured in accordance with a sheller contract. For example, if you choose 100 percent of the maximum price election for peanuts not insured in accordance with a sheller contract, you must also choose 100 percent of the applicable price election for peanuts insured in accordance with a sheller contract.

(b) You may not insure more pounds of peanuts than your production guarantee (per acre) multiplied by the number of acres that